

# Calendar No. 66

82D CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 58

## ERNESTINE BACON JACOBS

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JANUARY 29, 1951.—Ordered to be printed

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Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany S. 613]

The Committee on the Judiciary, to which was referred the bill (S. 613) for the relief of Ernestine Bacon Jacobs, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to provide for the payment of the sum of \$345.25 to Ernestine Bacon Jacobs, wife of Clarence R. Jacobs, an employee of the Displaced Persons Commission, in full satisfaction of her claim against the United States for reimbursement of travel expenses incurred by her in obtaining return transportation to the United States for herself and her ailing minor child from her husband's overseas post of duty.

#### STATEMENT

An identical bill (S. 4000) was reported to the Senate favorably in the Eighty-first Congress but too late for action.

Claimant in this case is the wife of a Government employee stationed in Munich, Germany. After being in Germany for several months, their youngest child was admitted to the Ninety-eighth General Hospital where he was treated for strep throat and strep ears. After 10 days, the doctor in charge of the patient informed the parents that the child had symptoms of rheumatic fever. Five days later he was discharged as well, and 3 days later the child became very ill and was returned to the hospital for treatment for 5 weeks. From that time on for over a period of 14 months the child was given

periodical hospital treatment. In December 1949, the doctor in charge of the case informed the parents that a change of climate was necessary for the health of the child and recommended that he be sent back to the United States. The child's father requested orders returning the mother and the child to the United States, but under the then existing law (Public Law 600, 79th Cong., 60 Stat. 806, 808) such transportation could not be furnished at Government expense unless the employee himself traveled with the family. Subsequently, by Public Law 830, approved September 23, 1950, the act of August 2, 1946, was amended so as to permit the return of dependents because of "adverse living conditions seriously affecting the health, safety, or accommodations of said families." However, this provision was not made retroactive.

It is the opinion of the committee that even though the Congress at the time of passage of the amendment did not make it retroactive, that this does not preclude the Congress from giving consideration to particular cases, where the facts, such as in this case, seem to warrant it, granting relief.

The sum provided for in this bill is composed of the following items:

Railroad fare from Munich, Germany, to Le Havre.....	\$65. 00
Fare from Le Harve to New York.....	263. 25
Railroad fare from New York to Washington, D. C.....	17. 00
Total.....	345. 25

Attached hereto and made a part of this report are letters received from the Department of Justice and the Displaced Persons Commission in connection with this case.

DEPARTMENT OF JUSTICE,  
Washington, D. C., November 29, 1950.

HON. PAT MCCARRAN,  
*Chairman, Committee on the Judiciary,*  
*United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 4000) for the relief of Ernestine Bacon Jacobs.

The bill would provide for payment of the sum of \$345.25 to Ernestine Bacon Jacobs, wife of Clarence R. Jacobs, an employee of the Displaced Persons Commission, in full satisfaction of her claim against the United States for reimbursement of travel expenses incurred by her in transporting herself and ailing son from her husband's overseas post of duty to the United States.

In compliance with your request, a report was obtained from the Displaced Persons Commission concerning this legislation. According to that report, which was accompanied by copies of pertinent correspondence, Mr. Jacobs made an oral request of one of the Commissioners while he was in Europe, for the return of his wife and son, and was informed that the matter would be looked into upon the Commissioner's return to Washington. A request for a decision on this matter was later submitted by the Coordinator for Europe and authorization was denied. The report states that the denial of authorization in this, as well as several other instances of this type equally appealing, was not based upon an administrative decision of the Commission, but rather on the provisions of the act of August 2, 1946, Public Law 600 (60 Stat. 806, 808) and the rulings of the Comptroller General rendered pursuant thereto. The report states that it is the Commission's opinion that such a bill, if passed, would set an unfavorable precedent for cases of this type, in view of the above-mentioned rulings of the Comptroller General.

The report of the Commission does not state what action was taken by the employee and his dependents after receipt of the Commission's communication denying authorization for travel. The existence of the instant bill, however, raises the presumption that the employee's wife and son thereafter returned to the United States at their own expense and it is now sought by means of this bill to secure reimbursement for such expense from the Government. In this connection attention is directed to Public Law 830, approved September 23, 1950, which amended the act of August 2, 1946, *supra*. Section 1 (d) of the amendatory Act provides, among other things, that "When civilian officers and employees of the United States are on duty at places designated by the heads of their respective departments or agencies as within zones from which their immediate families should be evacuated for \* \* \* adverse living conditions seriously affecting the health, safety, or accommodations of said families \* \* \* their immediate families and household goods may be transported at Government expense \* \* \* to such location as may be designated by the civilian officer or employee concerned \* \* \*." Had this provision been in effect at the time Mrs. Jacobs and her son returned to the United States, it is conceivable that the Government would have paid their travel expenses provided all of the conditions set forth in section 1 (d) were met.

It would appear that through enactment of this section the Congress desired to ameliorate the stringent provisions of the Act of August 2, 1946, which, as interpreted by the Comptroller General, had permitted the payment of dependents' travel expenses only when the employee himself traveled with them. It would also appear, however, that the Congress intended the amendatory act to cover only situations arising after its enactment. Since the law was not made retroactive it accordingly does not cover the instant situation. As pointed out in the report of the Displaced Persons Commission, this situation was not unique and other requests for dependents' travel expenses have had to be refused by that agency. Doubtless similar requests have been made by employees of other agencies of the Government and have had to be refused by such agencies. It would thus appear that enactment of this bill would be discriminatory in that it would accord relief to this particular claimant where others similarly situated have not been permitted to recoup their travel expenses from the Government.

In the light of the foregoing circumstances, the Department of Justice concurs in the view of the Displaced Persons Commission that the bill be not enacted.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,  
Deputy Attorney General.

DISPLACED PERSONS COMMISSION,  
Washington, D. C., August 14, 1950.

Hon. PEYTON FORD,  
Department of Justice, Washington, D. C.

MY DEAR MR. FORD: Reference is made to your letter of August 7, 1950, transmitting a bill (S. 4000), for the relief of Ernestine Bacon Jacobs and requesting our views on this bill.

The employee in this case made an oral request of one of the Commissioners while he was in Europe, for the return of his wife and son, and was informed that the matter would be looked into upon the Commissioner's return to Washington. A request for a decision on this matter was later submitted by the Coordinator for Europe, in a memorandum dated April 18, 1950, a copy of which is attached. A copy of our reply, dated April 21, 1950, denying this request, is also attached hereto.

The action taken by this office in denying this request as well as several others of this type equally compassionate, was not based upon an administrative decision of the Commission, but rather on the provisions of the act of August 2, 1946, Public Law 600 (60 Stat. 806, 808), and the rulings of the Comptroller General rendered pursuant thereto.

It is our opinion that such a bill, if passed, would set an unfavorable precedent for cases of this type, in view of the above-mentioned rulings of the Comptroller General.

Sincerely yours,

ARTHUR J. HAZES, *Executive Director.*

[Copy]

APRIL 21, 1950.

To: Mr. Alex E. Squadrilli, Coordinator for Europe, United States Displaced Persons Commission, Frankfurt, Germany.  
 From: Arthur J. Hazes, Executive Director, Displaced Persons Commission, Washington.  
 Subject: Dependents of Mr. Clarence R. Jacobs.

Reference is made to your memorandum of April 18, 1950, requesting authorization to return the dependents of the above-mentioned employee. Such authorization cannot be granted, as explained in my memorandum to you of this date on the subject of returning dependents prior to the return of the employee, copy attached hereto.

ARTHUR J. HAZES, *Executive Director.*

[Copy]

APRIL 21, 1950.

To: Mr. Alex E. Squadrilli, Coordinator for Europe, United States Displaced Persons Commission, Frankfurt, Germany.  
 (Attention: Mr. Ryan)  
 From: Arthur J. Hazes, Executive Director, Displaced Persons Commission, Washington, D. C.  
 Subject: Return of dependents prior to the return of the employee.

Reference is made to the various communications between your office and this headquarters on the above subject. It is felt that the policy on this matter has been clearly established. You are reminded, however, that this policy is not a ruling of the Commission, but is applicable to all agencies of the Government service whose administrative authority has been fixed by Public Law 600, approved August 2, 1946. The Commission has neither the authority nor the intention of violating the provisions of this act.

In interpreting the provisions of this act, the Comptroller General has ruled:

"Inasmuch as the authority in section 7 of the administrative expense statute of August 2, 1946, to return dependents of employees stationed overseas is inseparable from the authority to return the employee himself, there can be no valid travel authority issued for dependents alone, so that if return travel of dependents occurs prior to the issuance of proper orders directing the return of the employee and his dependents—*regardless of the reasons for such prior travel*—expenses incident thereto are not payable"; [italics supplied].

Your attention is directed to page 2, second paragraph of my memorandum of February 13, 1950, which states: "In no event can dependents be returned to the United States unless it is also the intent to return the employee."

We are well aware of and thoroughly understand the hardships and inconveniences encountered by the overseas employees and their dependents; however, there are regulations which must be adhered to. If a transfer to another area to alleviate the difficulties cannot be effected, there is no other alternative but for the employee to arrange for the return of his dependents at his own expense.

ARTHUR J. HAZES, *Executive Director.*

[Copy]

Through Official Channels

MUNICH, GERMANY, March 27, 1950.

Mr. HARRY N. ROSENFELD,  
 Commissioner, United States Displaced Persons Commission,  
 Washington, D. C.

DEAR MR. ROSENFELD: During your recent visit to Munich you will recall that I spoke to you with reference to my wife and son who have been in constant ill health since their arrival in Germany and at the same time I also asked you as to the possibility of their being returned home, and you said you thought it could be arranged. As things are getting no better I am asking that my wife and son be returned to the States for health reasons.

Will you kindly advise me at your earliest convenience when this can be arranged?

My personal greeting to you and all of the Washington staff.

Sincerely yours,

C. R. JACOBS.